

A Brief Note on Procedure for Demand of Customs Duty

Prepared from https://www.cbic.gov.in/resources//htdocs-cbec/deptt_offcr/customs-manual2018.pdf

[Prepared to supplement online teaching only]

What is Demand of Customs Duty?

The Customs duty is determined in terms of Section 15 or section 16 of the Customs Act, 1962 in respect of imported or export goods. If the duty paid (/ levied/ erroneously refunded) is found to be less than the due, the importer (or exporter is required to pay the short levied / non levied or short paid /) non paid amount of duty. In this regard, the Customs Act, 1962 empowers officers to issue a demand cum Show Cause notice for recovery of amount of duty short levied/ non levied from the importer/exporter.

Types of Non-payment or less payment of duty:

- i) By error: By human error without any deliberate attempt
- ii) By willful mistake /fraud: By suppression of facts, by stating wrong information

Time limit for issuing Order of Customs duty payment which is due [u/s 28]:

For error: The order should be made with 3 years from the date in which the customs duty was due. In case of erroneous refund, 3 years from the date of such refund.

For willful misstatement/fraud: 5 years from the date in which the customs duty was due. In case of erroneous refund, 5 years from the date of such refund, the Order can be issued.

The show cause notice for demands issued for short levy of duty as a result of audit objection, arising out of assessment etc. are to be finalised within 6 months from the date of issue of the demands.

Effect of order after time limit?

It is important that the demand should be served on the importer within the time limit under section 28 of the Custom Act as otherwise the demand shall become time barred and legally not recoverable.

What is the amount of penalty for short Payment?

The importer or the exporter to whom a notice is served under the Section 28(4) of the said Act pays the duty within 30 days of receipt of the notice. The amount of payment would be duty in full or in part as may be accepted by him plus the interest payable thereon under Section 28AA of the said Act and penalty equal to 25% of the said duty.

Procedure of Demand of Customs Duty:

When the short levy is discovered or pointed out by Audit, a notice is served on the importer or the persons chargeable with duty to show cause as to why the amount due should not be recovered from

him. Normally a period of 15 days is given to show cause why he should not pay the amount. The basis and the working of the short levy is required to be clearly stated in the Show Cause Notice. Copies of relied upon documents are also be furnished to the noticee, to enable him to represent his case. All such notices are required to be sent by Registered Post or given to the Agent under receipt/acknowledgement after being entered in the less charge demand register maintained in the respective sections of the Custom House.

Upon receipt of the reply from the Noticee the matter is examined in detail and the Noticee is offered an opportunity of Personal Hearing to explain his case before the adjudicating authority. After the Personal Hearing the adjudicating authority shall examine the material placed before him and shall come to the conclusion after taking into consideration the provisions of Law concerning the issue. Generally, the issues involved are misdeclaration of the description of the goods resulting in wrong classification and levy of lesser duty, misdeclaration of value, quantity and weight having a bearing on duty, calculation error resulting in short levy of duty, non inclusion of certain components of value in the assessable value etc.

The adjudicating authority is required to take an independent decision as an quasi-judicial authority and pass appropriate orders either determining the amount of short levy in terms of section 28 (2) of Customs Act or dropping the proceedings where it is found that there is no short levy. In either case an appealable order is to be issued by the adjudicating authority. The duties, fines and penalties imposed, if any, are required to be paid immediately, unless the party files an appeal and obtains a stay from the competent authority.

